

STATEMENT OF ATTORNEY STEVEN A. LEVINE TO THE SENATE JUDICIARY, CORRECTIONS, AND HOUSING COMMITTEE IN SUPPORT OF AB 368, WHICH ESTABLISHES A UNIFORM 30 DAY PERIOD FOR JUDICIAL REVIEW OF STATE AGENCY DECISIONS IN BOTH CONTESTED AND NONCONTESTED CASES.

My name is Steven Levine, an attorney licensed to practice law in Wisconsin for the past 34 years. I am currently Past-President of the State Bar of Wisconsin and Assistant General Counsel for the Wisconsin Public Service Commission, where I have practiced in the area of Public Utility and Administrative Law for the past 32 years. I am submitting this statement for myself and not on behalf of either organization.

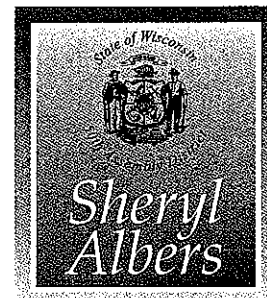
AB 368 would establish a uniform 30-day period for judicial review of agency decisions in both contested and non-contested cases. I appreciate the opportunity to submit this statement in strong support of AB 368, and I want to especially thank Senator Taylor for scheduling this hearing on AB 368, as well as all sponsors and cosponsors.

Until about 8 years ago, it was assumed that the statutory 30-day period for judicial review of state agency decisions in Wis. Stat. § 227.53(1)(a)2 applied to review of both contested and non-contested cases. A contested case is "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party and in which, after a hearing required by law, a substantial interest of a party is determined or adversely determined by a decision or order." Wis. Stat. § 227.01(3). A non-contested case is a case in which there is no disagreement among the parties or a case in which a hearing is not required by law.

Then, two cases¹ were decided by the Court of Appeals in which the court determined that the 30 day period for judicial review set forth in § 227.53(1)(a)2 applied only to contested cases. The court determined that no statutory period applied to non-contested cases, and it therefore applied a 6 month "default" period for judicial review of non-contested cases. *Hedrich v. Board of Regents of Univ. of Wisconsin*, 2001 WI App. 2008, 248 Wis.2d 204, 216, 635 N.W.2d 650. While this 6 month default period may have been required by the Court's determination that Wis. Stat. Ch. 227 fails to provide a limitation period for review of non-contested cases, it does not make practical sense for several reasons. 1. The 30 day period of § 227.53(1)(a)2 is designed to provide finality for agency decisions. A six month period frustrates that purpose. If an agency has to wait for 6 months without knowing whether one of its orders is going to be appealed, little could be accomplished. 2. There are situations when it is unclear whether a case is contested or non-contested, leading to confusion as to the appropriate period for judicial review. 3. Since the language of § 227.53(1)(a)2 still contains the 30 day period for judicial review of agency decisions, casual practitioners of administrative law may be unaware of the different period for non-contested cases set by the Court of Appeals in *Hedrich*. 4. No logical reason exists to justify a different period of review for non-contested cases than the 30 day period set forth for contested cases.

AB 368 resolves the problem of different periods for judicial review of agency decisions by re-establishing the pre-*Hedrich* 30 day review periods for both contested and non-contested cases. I strongly support AB 368 and urge its approval by this committee.

¹ *Collins v. Policano*, 231 Wis.2d 420, 605 N.W.2d 260 (Ct. App. 1999); *Hedrich v. Board of Regents of Univ. of Wisconsin*, 2001 WI App. 2008, 248 Wis.2d 204.



**Rep. Albers Testimony on AB 368 before the
Senate Committee on Judiciary, Corrections, and Housing
March 6, 2008**

Thank you Chairwoman Taylor and members of the committee for allowing me to testify before you today on Assembly Bill 368. This is a fairly simple and straightforward bill that seeks to correct an anomaly in state statutes as a result of two Court of Appeals decisions on judicial review of agency decisions. The situation is as follows:

Until about seven years ago, it was assumed that the statutory 30 day period for judicial review of state agency decisions applied to review of both contested and non-contested cases. A contested case is defined as "an agency proceeding in which the assertion by one party of any substantial interest is denied or controverted by another party in which, after a hearing required by law, a substantial interest of a party is determined or adversely determined by a decision or order." A non-contested case is a case in which there is no disagreement among the parties or a case in which a hearing is not required by law.

However, two related decisions by the Court of Appeals (*Hedrich v. UW Board of Regents* and *Collins v. Policano*) determined that the 30 day period for judicial review applied only to contested cases. It determined that no statutory period applied to non-contested cases, so a 6 month "default" period applied.

This extended period for non-contested cases makes no practical sense. AB 368 would correct this illogical discrepancy as created by the Court of Appeals and end any confusion for petitioners for review of judicial decisions and practitioners of the law.

Thank you for your consideration, and I would be happy to answer any questions you might have.